

## **Comment regarding:**

### **“Sorenson’s Petition for a Declaratory Ruling or Alternatively a Rulemaking Regarding Call Handling Obligations” dated November 8, 2016**

#### **BACKGROUND**

A group of VRS interpreters raised concerns after studying (a) historical and current ethical rules for interpreters, (b) laws and regulations governing VRS, and (c) laws from Titles 18 and 47 of the United States Code. After realizing that a fundamental ethical principle from community interpreting had been misapplied to VRS interpreting and after learning the legal definition of wire fraud, the interpreters recognized the validity and gravity of their concerns. The numerous references to case law presented by Sorenson in its petition have served to broaden those concerns.

#### **CLARIFICATION OF VRS INTERPRETERS’ CONCERNS**

The concerns are not about VRS calls that merely “appear” to have illegal content or in which the interpreters “believe” the behavior of one or more of the callers is “unethical”. For purposes of clarification, the two questions referred to in Sorenson’s petition are reframed below.

1. Is the TRS fund to be used for facilitating calls for (a) individuals who use VRS to **flagrantly** commit wire fraud perpetrated against people who are deaf or hard of hearing and (b) individuals who use VRS to **flagrantly** buy, sell, or otherwise distribute child pornography?
2. Does the Commission require VRS interpreters to interpret for and to thereby assist such callers?

If the Commission explicitly mandates that VRS interpreters handle all calls including those in which individuals use VRS facilities and interpretations to flagrantly commit crimes during the calls themselves, the ramifications will be unprecedented and far-reaching. VRS interpreters will be the only workers in the United States who are legally required to (a) witness and (b) assist people using their services to flagrantly and concurrently commit crimes.

#### **FUNCTIONAL EQUIVALENCE**

TRS originated from the Americans with Disabilities Act (ADA). Was the ADA intended and enacted to increase opportunities for people to be victims of and/or perpetrators of crime? Does the term “functional equivalence” express such a purpose? In its Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People, the National Association of the Deaf writes,

Too many entities and individuals continue to hang up on calls that come in through the relay services. In addition, there have been media reports of individuals who are *not* deaf or hard of hearing who have used or pretended to use relay services to commit or attempt to commit fraud against individuals, businesses, and financial institutions. These experiences and media reports stigmatize the relay system, even though commonly used security measures can significantly reduce or eliminate identity theft and fraud. The FCC, in concert and collaboration with other federal and state agencies, must disseminate information broadly about relay services to the general public to improve understanding, acceptance, and use, and to restore the public trust in relay services.<sup>1</sup>

Does NAD's appeal to combat fraud and to restore public trust in the relay services not apply to protecting the TRS fund? Does it not apply to preventing individuals from using VRS to flagrantly commit wire fraud against deaf and hard of hearing people, to flagrantly distribute child pornography, or to flagrantly commit other crimes?

## **PREVENTING MISUSE OF THE TRS FUND DOES NOT INHERENTLY EQUATE TO BREACHING CONFIDENTIALITY**

The Commission and VRS providers already rely on VRS interpreters in numerous ways to prevent misuse of VRS facilities and abuse of the TRS fund. When a VRS interpreter determines during a call that the two parties are in the same location, for example, the call must be disconnected and logged as nonbillable. Likewise, when a VRS interpreter witnesses the misuse of Voice Carry Over, the call must be disconnected. These established gatekeeping responsibilities do not result in interpreters divulging the content of such calls or otherwise violating privacy. It is unclear why Sorenson's petition has equated such a gatekeeping role with breaching confidentiality.

## **LEGAL TRAINING**

The concerned interpreters have not proposed that VRS interpreters should have or could have enough training to know all the laws in the United States, Canada, and Puerto Rico. Understanding the definition of wire fraud and keeping up to date with the Federal Trade Commission's (FTC's) scam alerts, however, provide a means for VRS interpreters to identify flagrant wire fraud. Flagrant distribution of child pornography is not difficult to identify.

Fraud by wire, radio, or television

<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap63-sec1343.pdf>

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<sup>1</sup> National Association of the Deaf, Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People (December 21, 2014), <https://nad.org/position-statement-functionally-equivalent-telecommunications-deaf-and-hard-hearing-people>.

## FTC Scam Alerts

<https://www.consumer.ftc.gov/scam-alerts>

Is it the Commission's position that since VRS interpreters would be unable to identify all crimes perpetrated by individuals using VRS facilities for illegal purposes, then therefore VRS interpreters should be required to feign oblivion when confronted with **flagrant** crimes being perpetrated by callers using VRS facilities?

### **“IN THE NORMAL COURSE OF BUSINESS”**

The conclusion of Sorenson's petition states, “The Commission should clarify that its rules preempt state or federal law to the extent that it would impose liability for interpreting a call in the normal course of business.” What does the Commission define as “the normal course of business”? Would “the normal course of business” for the VRS industry include facilitating flagrant wire fraud during VRS calls and facilitating flagrant trafficking of child pornography during VRS calls?

### **SUMMARY**

The FCC Web site has this statement about IP Relay:

The FCC is working with consumer groups and relay service providers to prevent misuse of the service and issues public notices to warn businesses of the potential for fraudulent business transactions being perpetrated through IP relay. We also work with the Department of Justice, the FBI and the FTC to prevent fraudulent business transactions by phone or over the internet.<sup>2</sup>

The Commission has made many such statements over the years about its goal to combat fraud in TRS. Numerous Semiannual Reports of the FCC Office of Inspector General describe its efforts to combat fraud in TRS. The Government Accountability Office, in April 2015, published a report to the Honorable Jeff Sessions, U.S. Senate, entitled “Telecommunications Relay Service: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities”. In that report, there are 37 references to the topic of fraud and a specific reference to “Nigerian scam calls”<sup>3</sup> in IP Relay.

And yet, are VRS interpreters to understand that the Commission requires them (1) to feign oblivion when faced with individuals using VRS to flagrantly commit crimes, (2) to facilitate the VRS calls for those individuals, and (3) to bill the TRS fund for their calls?

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<sup>2</sup> IP Relay Fraud, What the FCC is doing to prevent IP relay fraud, <https://www.fcc.gov/consumers/guides/ip-relay-fraud>.

<sup>3</sup> U.S. Government Accountability Office, GAO-15-409, *FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities* 16

When considering this topic in 1991 as related to TTY Relay—long before VRS existed—the Commission did not accurately predict conditions that would confront today’s VRS interpreters when it wrote,

We believe that CAs, in the normal performance of their duties, would generally not be deemed to have a “high degree of involvement or actual notice of an illegal use” or be “knowingly” involved in such illegal use. We also note that, as a practical matter, the extensive record in this proceeding suggests that actual incidents raising these questions will arise rarely, if ever.<sup>4</sup>

To understand the scope and nature of this issue, the Commission is urged to interview non-management VRS interpreters.

Respectfully submitted,

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<sup>4</sup> *Telecomms. Servs. for Individuals with Hearing and Speech Disabilities*, Report and Order and Request for Comments, 6 FCC Rcd. 4657, 4660 ¶ 15 (1991) (“*TRS 1991 R&O*”).